

Texas Lawyer: Year in Review: Real Estate

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By Bob Burton

House Bill 1455 (84R) added two new sections to Chapter 82 of the Texas Property Code (the Texas Uniform Condominium Act).

Section 82.119 establishes procedures that must be following by a condominium association prior to filing suit or initiating arbitration proceedings for claims associated with the construction or design of condominium common elements and/or condominium units. Section 82.119 only applies to claims brought by the condominium association and does not apply to claims brought by an individual owner. Prior to filing suit or initiating an arbitration proceeding, the condominium association must first obtain an independent inspection of the common elements and/or units that are subject to the claim. The parties subject to the claim, e.g., the developer, contractors, and/or design professionals, must be provided notice of the inspection, an opportunity to attend the inspection, and a copy of the final inspection report. Once the inspection report is complete, and for a period of 90 days thereafter, the parties subject to the claim may inspect or correct any condition identified in the report. If the conditions identified in the inspection report are not corrected, and the condominium association still desires to file suit or initiate arbitration proceedings, the condominium association must first provide each member a copy of the inspection report and a detailed notice describing the claim and the effect of litigation or arbitration on the community, schedule a member meeting, and at the member meeting obtain the approval to file suit or initiate the arbitration proceeding from at least 50 percent of the members.

Section 82.120 provides that a condominium declaration may include provisions that require binding arbitration for claims associated with the construction or design of common elements and units and may also include additional procedures to resolve the claim. Section 82.120 also provides that any amendment to remove an arbitration requirement or the process to resolve a claim associated with the construction or design of common elements and units from a condominium declaration will not apply retroactively to a claim that arose prior to the effective date of the amendment.

Bob Burton is a shareholder in Winstead's real estate development & investments practice group. Burton's practice has an emphasis on the planning, development, risk management, administration and marketing of single-family, townhome, condominium, commercial, and mixed-use projects, as well as timeshares and resorts.

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